

The Canadian Institute's 9th National Summit on

Institutional Liability for Sexual Assault and Abuse

Overcoming Key Hurdles in Bringing and Defending Child Sexual Assault and Abuse Claims

Co-Chairs:



Jack Fitch
Partner
Hughes Amys LLP



Simona Jellinek
Partner
Jellinek Law Office

Exceptional Speaker Faculty Includes:

Dr. Richard Berry
Clinical & Forensic Psychologist
BerryChong Registered Psychologists

Cara L. Brown
Principal, Brown Economic
Consulting Inc. (Calgary)

Dr. Nina Josefowitz
Psychologist
Private Practice (Toronto)

Kristina Reitmeier
Chief Counsel/Director, Legal Services
Children's Aid Society of Toronto

Paul G. Torrie
Mediator
Global Resolutions Inc.

...And many more!

Don't miss this **key opportunity** to hear how to **minimize, manage, and overcome** the most challenging issues arising from institutional child sexual assault and abuse cases, including:

- › **SCRUTINIZING** institutional liability for abuse in **foster care situations**
- › **DEVELOPING key protocols in investigating claims** to manage the extent of the institution's liability
- › **OVERCOMING** hurdles in establishing **causation and evidentiary thresholds** in sexual assault cases
- › **OBTAINING** the latest information on **quantification of damages** from recent case law
- › **REDUCING** allegations of abuse by improving **risk control systems**

PLUS!

Gain additional value by attending the post-conference workshop on April 9, 2010, **Developing Effective and Practical Risk Management Programs**

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Implement Best Legal and Compliance Practices to Minimize Allegations of Abuse and Protect Both Organizations and Children Alike

Dear Colleagues,

The Canadian Institute is pleased to invite you to attend our 9th National Summit on Institutional Liability for Sexual Assault and Abuse, which, in response to your voiced needs, focuses exclusively this year on overcoming hurdles in bringing and defending claims in respect of current or historical abuse against children.

New claims of sexual assault and abuse against children are being brought against governments, religious institutions and schools alike for both current and historical claims. Institutional liability for foster care situations is a key concern and institutions are unsure of the extent of their liability for the acts of certain types of individuals. Class actions litigation for child abuse claims presents particular challenges with regard to certification and determining quantum of damages, and the ranges in damages awards for abuse claims generally are so wide that anticipating and advising on damages appears next to impossible. Meanwhile, the past year has seen significant case law developments in determining causation factors and assessment of the quantum of damages.

This year's program provides defence and plaintiff's counsel and institutions the opportunity to determine the impacts of recent case law, legislative and other trends on litigation strategies and internal risk exposures and processes. Our outstanding faculty will help you to:

- CONSIDER the impacts of the new civil litigation regime in Ontario for abuse cases
- IMPLEMENT state-of-the-art forensic and investigative techniques
- DEVELOP strategies to manage evidentiary challenges in historic abuse claims
- APPLY winning strategies in litigating class action sexual assault and abuse claims
- UNDERSTAND factors contributing to the ranges in damages awards
- EXAMINE recent case law and trends relevant to insurance coverage for institutional liability claims
- And much more!

PLUS! Add practical value to your attendance by joining our post-conference workshop, "Developing Effective and Practical Risk Management Programs".

Register now by calling toll-free 1-877-927-7936 or online at www.canadianinstitute.com/ILSA.

I look forward to welcoming both new and past attendees to the conference in April!



Kindest regards,
Monica Lim B.A. (Hons.), CPE & LPC (U.K.), Solicitor (U.K.)
Senior Legal Conference Producer, The Canadian Institute

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Distinguished Speaker Faculty

Co-Chairs:

Jack Fitch
Partner
Hughes Amys LLP

Simona Jellinek
Partner
Jellinek Law Office

Speakers:

Glenn R. Anderson, Q.C.
Senior Solicitor, Legal Services Division
Nova Scotia Department of Justice

Dr. Richard Berry
Clinical & Forensic Psychologist
BerryChong Registered Psychologists

Cara L. Brown
Principal
Brown Economic Consulting Inc.

W. Colin Empke
Insurance Coverage Counsel
Blaney McMurtry LLP

Elizabeth Grace
Partner
Lerners LLP

Harmon C. Hayden
Partner
Watson Goepel Maledy LLP

Simona Jellinek
Partner
Jellinek Law Office

Dr. Nina Josefowitz
Psychologist
Private Practice (Toronto)

Paul Ledroit
Partner
Ledroit Beckett LLP

James V. Maloney
Partner
Hughes Amys LLP

John McKiggan
Partner
Arnold Pizzo McKiggan LLP (Halifax)

Loretta P. Merritt
Partner
Torkin Manes Barristers & Solicitors

Kristina Reitmeier
Chief Counsel/Director, Legal Services
Children's Aid Society of Toronto

Robert Talach
Partner
Ledroit Beckett LLP

Paul G. Torrie
Mediator
Global Resolutions Inc.

Robert M. Zarnett
Partner
Smockum Zarnett Percival LLP

Workshop Leaders:

James E. Doyle
Partner
Walsh McLuskie & Doyle Barristers & Solicitors

Lucien St-Martin
Managing Director
Catholic Religious Self Insured
Retention Program

DAY 1: Wednesday, April 7, 2010

8:00 **Registration Opens and Coffee Served** 

9:00 **Opening Remarks from the Co-Chairs**

Jack Fitch

Partner
Hughes Amys LLP

Simona Jellinek

Partner
Jellinek Law Office

9:15 **Update of Trends and Legal Developments in Institutional Liability for Sexual Assault and Abuse**

Elizabeth Grace

Partner
Lerners LLP

John McKiggan

Partner
Arnold Pizzo McKiggan LLP

- Exploring new legal developments applicable to abuse, including new case law and statutory developments
- Anticipating exposures by examining trends in mass tort and class actions litigation
- Identifying the duties of the Crown: Considering *Syl Apps Secure Treatment Centre v. B.D.*
- Review of new developments in the law of limitations:
 - Demystifying the 2004 Ontario *Limitations Act* in relation to child sexual assault and abuse claims:
 - Understanding sections pertaining to abuse and waiver of limitation periods: How is the judiciary interpreting such sections?
 - Clarifying the deeming provisions
- Considering the impacts of the new civil litigation regime in Ontario for abuse cases:
 - Considering how changing monetary jurisdiction in both small claims courts and simplified rules will impact the bringing of sexual assault and abuse cases
- Mitigating institutional risk exposures by issuing a public apology: When it is appropriate to issue a public apology?

10:15 **Developing Effective Litigation Strategies by Determining the Extent of Institutional Vicarious Liability for Sexual Assault and Abuse**

Harmon C. Hayden

Partner
Watson Goepel Maledy LLP (Defence Counsel)

Loretta P. Merritt

Partner
Torkin Manes Barristers & Solicitors
(Plaintiffs' Counsel)

- Uncovering emerging trends in types of institutions being named as defendants:
 - Religious institutions, school boards, children's aid societies
- Scrutinizing institutional liability for abuse in foster care situations:
 - Identifying the duties attaching to the Crown or to the institution having oversight of child services
 - Where is the line drawn between circumstances where vicarious liability will be found or not?
 - Applying recent case law developments and examining trends for the future
- Evaluating limits on liability:
 - What constitutes an "agent" of the institution? Is an institution vicariously liable for the acts of volunteers and visiting priests?
 - Considering the liability of governments as funders of an institution against whom an allegation of abuse is made
 - Extent of liability where the abuse occurred at a non-institution controlled location
 - Pros and cons of claiming "victimization" by the alleged perpetrator as a possible defence

11:15 **Networking and Refreshment Break**

11:30 **Protecting the Institution by Applying Best Practices in Investigating Sexual Assault and Abuse Claims**

Jack Fitch

Partner
Hughes Amys LLP

Kristina Reitmeier

Chief Counsel/Director, Legal Services
Children's Aid Society of Toronto

- Implementing the latest state-of-the-art forensic and investigative techniques: What they are; how to use them; what is involved
- Determining fair ways to validate victims' claims without "re-victimizing" the victim
- Understanding the extent to which evidence obtained from an investigation can be used in civil or criminal proceedings:
 - Top strategies for Plaintiff's counsel to obtain evidence from investigations
 - What can Defence counsel do to protect such evidence from being used?
- Checklist of key protocols in the investigation or development of a claim to minimize or manage the extent of the institution's liability:
 - Avoiding allegations of ineffective investigations and failure to remove a child from an abusive situation
 - How to protect institutions from future claims

12:30 **Networking Luncheon for Delegates and Speakers** 

1:45 **Overcoming Key Discovery Challenges in Sexual Assault and Abuse Cases**

Simona Jellinek

Partner
Jellinek Law Office (Plaintiffs' Counsel)

Robert M. Zarnett

Partner
Smockum Zarnett Percival LLP (Defence Counsel)

- Top strategies for both Plaintiff's and Defence counsel to determine the specifics of the alleged incident
- Overcoming hurdles in establishing causation in sexual assault cases: Methods to determine to what extent pre-and post-incident circumstances impact upon the psychological state of the Plaintiff
- Meeting the challenge of establishing economic loss
- Managing specific evidentiary challenges in historic assault and abuse claims:
 - Top tips for finding historic records: How do you find people who may have moved to another location?
 - Examining different methods in obtaining the parties' recollection of the events
 - Strategies to present the case from the Plaintiff's perspective
 - Strategies to defend a case of historical sexual assault and abuse
- Best practices for document management and e-discovery:
 - Anticipating the financial cost of e-discovery: How to minimize time and expense
 - Using electronic documents in court

2:45 **Networking and Refreshment Break**

3:00 **Saving Time and Cost by Determining What You Can Expect to Receive at the Production Stage**

James V. Maloney

Partner
Hughes Amys LLP

Kristina Reitmeier

Chief Counsel/Director, Legal Services
Children's Aid Society of Toronto

- Advice to Plaintiff's counsel on what kinds of documents you can and cannot expect to receive:
 - Understanding Children's Aid Society records and archival records of religious institutions: A primer on what you can get, how you get them, what you will not get
- What can you get from the perpetrator himself?
- Obtaining third party records:
 - Examining the circumstances in *R.v. O'Connor*
 - Determining what does the Court considers when defence counsel seeks child welfare records
 - What procedures do the courts have to follow?
- Top strategies for Plaintiff's counsel to obtain full production in advance of the examination

- Identifying special issues relating to dealing with privacy interests
- Sifting through what is relevant and what is not:
 - Are insurance policies that were put in place years or decades ago still relevant?

4:00 **Preparing for Class Action Sexual Assault and Abuse Cases**

John McKiggan

Partner
Arnold Pizzo McKiggan LLP

- Cross-Canada update of class actions litigation against institutions and governments for child sexual assault and abuse:
 - Considering the Antigonish diocese class action, the BC Woodlands School class action and others
- Determining core differences and challenges between bringing and defending an individual, a mass tort and a class actions case against an institution or government for sexual assault and abuse:
 - Overcoming certification hurdles
 - Dealing with multiple insurers
 - Resolving quantification of damages issues in class actions proceedings
- Implementing winning strategies in litigating class actions sexual assault and abuse claims:
 - Unique ways to bring and defend class action proceedings
 - Working effectively with multiple sets of lawyers and other players
 - Top tips to streamline and control the action

5:00 **Conference Adjourns**

DAY 2: Thursday, April 8, 2010

8:00 **Coffee Served** ☞

8:45 **Opening Remarks from the Co-Chairs**

Jack Fitch

Partner
Hughes Amys LLP

Simona Jellinek

Partner
Jellinek Law Office

9:00 **Winning Strategies to Use Expert Evidence to the Best Advantage**

Glenn R. Anderson, Q.C.

Senior Solicitor, Legal Services Division
Nova Scotia Department of Justice (Defence Counsel)

Robert Talach

Partner
Ledroit Beckett LLP (Plaintiffs' Counsel)

- Determining the impacts of the Goudge Inquiry into Pediatric Forensic Pathology in Ontario on practice and use of expert evidence in investigations and criminal proceedings:
 - Establishing links between the Goudge Inquiry and the new rules of civil procedure in Ontario
 - Understanding what a doctor can and cannot say in relation to child abuse cases
- Staying out of hot water: Determining the extent to which you should work with your experts when developing their report:
 - How far can you go?
 - What do you target depending on the situation?
- Making or breaking the case: How much research should you put into looking for experts? Considering the pros and cons of using an expert that is not well known to the Court
- Top strategies for Plaintiff's and Defence counsel in relation to development and use of expert evidence
- What to look for in an expert's report when conducting an examination or cross-examination

10:00 **Overcoming Legal Hurdles in Identifying, Proving and Quantifying Damages**

Harmon C. Hayden

Partner

Watson Goepel Maledy LLP (Defence Counsel)

Paul Ledroit

Partner

Ledroit Beckett LLP (Plaintiffs' Counsel)

- Obtaining the latest updates on cases dealing with the quantification of damages:
 - Examining principles for the assessment of damages flowing from multiple tortious causes in *B.P.B. v. M.M.B.*; application to cases outside British Columbia
- Considering the "but for" and "material contribution" tests in establishing causation and assessing damages: *Resurfice Corp. v. Hanke*
- Linking causation with quantification of damages:
 - Methods to advance the politically incorrect argument against the victim without alienating the court
 - Dealing with multiple causation issues: Establishing divisibility of damages; considering the case of *EDG v. Hammer*
 - Top tips for defence counsel on using statistical information and evidence effectively
- Analyzing leading techniques to assess loss of income and the psychological component
- Understanding ranges in damages awards:
 - What are the ranges of damages being awarded?
 - Influence of the types of injuries sustained in determining quantum of damages
 - What is the rationale behind award of damages? Examining the influence of *Evans v. Sproule*
- Exploring the case for trying on individual circumstances rather than looking at the range
- Determining when the Plaintiff should bring the action: Is it fair for a lawsuit to be pursued immediately when the real effects of the abuse might not appear until adult-hood?

11:00 **Networking and Refreshment Break**

11:15 **Incorporating Mental Health Expert Views on Memory Recall and Causation into Claim Management and Litigation Strategy**

Dr. Richard Berry

Clinical & Forensic Psychologist

BerryChong Registered Psychologists

Dr. Nina Josefowitz

Psychologist

Private Practice (Toronto)

- Understanding what research tells us about normal and traumatic memory: What are the implications for the recall of sexual abuse?
- Do repressed memories exist and can they be accurate? What does the research say?
- Establishing causation factors: Methods used to determine the impacts of pre-existing factors and post-incident circumstances that may have contributed to the psychological state of the victim
- Understanding how mental health experts comment on whether the Plaintiff's symptoms are consistent with what they would expect given their research knowledge and clinical experience

12:15 **Networking Luncheon for Delegates and Speakers**



1:30 **Overcoming Evidentiary Thresholds to Establish Economic Loss**

Cara L. Brown

Principal

Brown Economic Consulting Inc. (Calgary)

- What are the ranges in damages awards for economic damages?
- What is the evidentiary threshold to make the link between the abuse and the economic loss?
- Using Statistics Canada's *General Social Survey* (GSS) data to calculate the economic impact of sexual assault on earnings:
 - Presenting the results from actual case studies
 - How do you adjust the data from the GSS when other abuses have occurred?
- Interpreting the impact of *B.M.G. v. Attorney General of Canada* on using economic evidence
- Additional heads of damage arising from sexual assault: Loss of marriage benefit
- How to use the *Income Damages Calculator*:
 - Live demonstration of an online calculator that counsel can use to advise plaintiffs on quantum or assess exposure for the defendant
 - Examples from actual mediations in a multi-plaintiff setting
- Considering different perspectives on the economic impact of sexual assault from forensic economists

2:15 The Latest Developments in Insurance Coverage for Institutional Liability

W. Colin Empke

Insurance Coverage Counsel
Blaney McMurtry LLP

- Examining recent case law and trends relevant to insurance coverage aspects of institutional liability claims
- Ensuring that your institution has adequate coverage for damages:
 - Understanding what type of coverage is available for different types of damages: General, aggravated and punitive damages
 - Identifying differences in insurance coverage for aggravated and exemplary or punitive damages
 - What to look for when reviewing your policy to ensure that you have adequate coverage
- Understanding under what circumstances intentional act exclusions apply
- Examining developments in abuse exclusions and how they are used: Evaluating the increasing use of sub-limits
- Clarifying an insurance company's duty to defend under a policy
- Identifying insurance coverage triggers:
 - Understanding how allocation occurs between covered and non-covered items
 - Examining recent changes in the law that might result in institutions paying substantially less in defence costs: Considering *Hanis v. University of Western Ontario*
- Avoiding situations where insurance coverage might become void: Identifying material misrepresentation and other conduct by the institution that can result in loss of coverage
- Overcoming specific insurance-related problems:
 - Determining which insurance company is on risk where more than one insurer is involved:
 - How do you determine the relative responsibility of each insurer?
 - Best practices for insurance companies to interact with each other
 - What to do when an insurer does not concede to consensus of coverage: Tips to avoid this situation
 - What to do when an original insurer in a historical abuse case is no longer in existence or has been bought out by another company: Who has responsibility for coverage?

3:00 Networking and Refreshment Break

3:15 Using Alternative Dispute Resolution Mechanisms Effectively in Sexual Assault and Abuse Claims

Paul G. Torrie

Mediator
Global Resolutions Inc.

- Considering advantages and disadvantages in using ADR in sexual assault and abuse cases:

- When is mediation appropriate and when is it not?
- Examples of creative resolutions used in different types of sexual assault and abuse claims
- Saving time, money and further harm to both the victim and institutions and government by resolving a claim before pleadings or discovery:
 - Putting ADR strategies into place
 - Obtaining the cooperation of all the parties: Mechanisms to bring everyone to the table
 - Dealing with multiple insurance players
 - Evaluating the use of defense response committees and reporting
- Examining the use of ADR mechanisms in class action proceedings:
 - Determining at what point you should have a pre-certification mediation
 - Developing early strategies to deal with the claim
 - Best practices for narrowing the defendants to a representative group

4:00 Incorporating Key Risk Management Considerations to Minimize Institutional Liability Exposures

James E. Doyle

Partner
Walsh McLuskie & Doyle Barristers & Solicitors

Lucien St-Martin

Managing Director
Catholic Religious Self Insured Retention Program

- Enabling institutions to reduce allegations of abuse by improving risk control systems:
 - Considering and factoring in the mission and culture of an institution
 - Preventative measures you need to have in place to protect your institution and those for whom you have responsibility
- Maximizing protections by ensuring adequate and effective training of staff: What they need to know; what they need to look out for; escalation procedures; reporting
- Underlining the necessity of ensuring that risk management procedures are followed:
 - Examining the effects of not following established risk management procedures
 - The insurance perspective: Understanding how insurance institutions measure an institution's exposures depending on its risk management system
- Best practices for responding to and managing claims to avoid exposing your institution further:
 - Top tips in documenting the process
- What considerations apply when there is no insurance coverage in respect of a claim?

5:00 Closing Remarks from the Co-Chairs Conference Concludes

POST-CONFERENCE WORKSHOP

Friday, April 9, 2010 | 9:30 a.m. – 12:30 p.m.

(registration and coffee served at 9:00 a.m.)

Developing Effective and Practical Risk Management Programs

Workshop leaders:

James E. Doyle

Partner

Walsh McLuskie & Doyle Barristers & Solicitors

Lucien St-Martin

Managing Director

Catholic Religious Self Insured Retention Program

- Reducing risk prior to a claim:
 - What measures should you have in place? A step-by-step guide of key considerations and risk management program development phases
 - Developing effective policies and procedures to identify, report on, and intervene in sexual misconduct situations
 - Best practices for training staff
- When to report a sexual assault claim:
 - Steps to go up the reporting ladder
 - Understanding the consequences of not reporting or late reporting
- Conducting internal investigations into a claim:
 - Best practices to manage risk and avoid future harm to the alleged victim
 - Identifying when to get external experts involved
 - Dealing with situations of unsubstantiated claims: Minimizing future liabilities
 - Best practices for documenting the investigation process
 - Considering the rights of the individuals against whom allegations are made
- Ensuring adequate and appropriate insurance coverage:
 - What you need to ensure is included
 - Understanding that you may not be covered for
 - How to read the key terms of insurance policies: Examples of key clauses

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- Municipal, Provincial and Federal Governments:
 - City Solicitors/Assistant City Solicitors
 - Legal Counsel
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 - Insurers of children's aid societies
 - Insurers of religious institutions

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The Canadian Institute's 9th National Summit on

Institutional Liability for Sexual Assault and Abuse

Overcoming Key Hurdles in Bringing and Defending Child Sexual Assault and Abuse Claims

Top Reasons to Attend

- ✓ UNDERSTAND the extent of institutional vicarious liability in differing situations
- ✓ MANAGE liability by avoiding allegations of ineffective investigations into claims
- ✓ OVERCOME key discovery challenges in historical assault and abuse claims
- ✓ SAVE TIME AND COST by understanding what you can expect to receive at the production stage
- ✓ ANALYZE leading techniques to assess quantum of damages
- ✓ EXAMINE the impacts of developments in abuse exclusions in insurance

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For information on hotel room availability and reservations, please contact Metropolitan Hotel at (800) 668-6600.

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STEP 3

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